

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Stephen Ivanovich,
Petitioner-Appellant,

v.

Polk County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 09-77-1277
Parcel No. 100/13424-001-001

On June 8, 2010, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioner-Appellant, Stephen Ivanovich, requested a hearing and submitted evidence in support of his petition. He was self-represented. The Board of Review designated Assistant County Attorney, David Hibbard, as its legal representative. It also submitted documentary evidence in support of its decision. The Appeal Board now having examined the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

Stephen Ivanovich, owner of property located at 4538 Lower Beaver Road, Des Moines, Iowa, appeals from the Polk County Board of Review decision reassessing his property. According to the property record card, the subject property consists of a one-story convenience store having 2604 square feet of finished area, no basement, 7000 square foot of asphalt paving, and yard lighting. The store was built in 1970, has 44% physical depreciation, has a 4-10 quality grade, and is in below normal condition. The improvements are situated on a 0.331 acre site.

The real estate was classified as commercial on the initial assessment of January 1, 2009, and valued at \$87,100, representing \$29,000 in land value and \$58,100 in improvement value.

Ivanovich protested to the Board of Review on the grounds that (1) the property was assessed for more than authorized by law under Iowa Code 441.37(1)(b); there was an error in the assessment under section 441.37(1)(d); and there has been a 30% downward change in value under sections 441.37(1) and 441.35. He claimed \$61,000 was the actual value and a fair assessment of the property. The Board of Review denied the protest stating, "The assessed value of this property was not changed because market data indicates that the property is assessed at its fair market value."

Ivanovich filed his appeal with this Board and claimed the ground of downward change in value. In a re-assessment year, a challenge based on downward change in value is akin to a market value claim. *See Dedham Co-op. Ass'n v. Carroll County Bd. of Review*, 2006 WL 1750300 (Iowa Ct. App. 2006). Accordingly, we do not consider downward change as a separate claim and consider only the claim of over-assessment.

Ivanovich testified the building was constructed 40 years ago by Kwik Shop Corporation and run by a franchisee. In 2001, he asserts the subject property was purchased for \$65,000 and he sold off the furniture, fixtures and equipment for \$10,000. He testified the assessor's records show a \$75,000 purchase price, and that he has unsuccessfully requested the Board of Review correct the record to show the actual purchase price every protest year. Ivanovich did not provide any evidence, such as a copy of the purchase agreement or declaration of value, to prove the alleged discrepancy between sale prices.

Ivanovich's current tenant is a locally owned and operated family convenience store. He reported his tenant was robbed three times last year and the building has bullet holes in the glass. He indicated the neighborhood has declined, crime has increased, and neighboring businesses are unsightly. His tenant pays \$800 rent monthly and Ivanovich pays \$317 real estate taxes monthly. The initial five-year lease on the property has expired, and his tenant now only rents month-to-month, apparently reluctant to sign an extension.

Ivanovich claims the property assessment has increased \$16,000 between 2001 and 2009. He believes the subject property should have the same value as when he purchased it and estimates it is worth between \$70,000 and \$74,000, based on his concession to a \$75,000 purchase price.

Ivanovich does not believe the sales used by the Board of Review are comparable to his property because two are on the south side of Des Moines, one of which is closed up and the other is a corporate store he considers dissimilar to the subject property. According to Ivanovich, the owner of the third comparable located on Payne Road believes he overpaid for the property inflating its value, then increased its value by remodeling before reselling it.

The Board of Review appraiser analysis listed three convenience store sales, one occurred in 2007 and two occurred in 2008. One of the sales was in the same area as the subject property. The comparables were similar to the subject property in size, and age. Two of the properties had higher quality grades than the subject property, and all properties were in better condition. Unadjusted sale prices ranged from \$150,000 to \$450,000, with a median sale price of \$200,000. Adjusted price per square foot ranged from \$56.69 to \$170.07 with a median of \$76.80 per square foot. The subject property is assessed well below the lower end of this range at \$33.45 per square foot.

The Board of Review also valued the property using an income approach which yielded a value of \$87,500. Ivanovich testified he did not provide business financial information to the Board of Review. We are hesitant to rely on this valuation because neither actual or market profit and loss figures were presented and there was no testimony concerning the development of the income approach.

Reviewing all the evidence, we find the preponderance of the evidence is lacking to support Ivanovich's claim of over-assessment. Although testimony suggested declining property values related to the age and disrepair of the subject property, and to disrepair and increased crime in the immediate

area, no objective evidence was presented from an independent, disinterested source to establish its fair market value either by sales comparison, an appraisal, or income approach valuation.

Conclusion of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are also to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

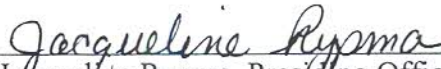
In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277

(Iowa 1995). This Board recognizes the general notion that the location and condition of a neighborhood, specific neighboring properties, and crime rates can affect a property's value. Also, the economy can certainly influence what a willing buyer will pay for a property. But this Board must be presented with more than just general assertions of what affects market value. We must look at market data -- whether sales, income or cost -- to determine whether the property is assessed for more than authorized by law. In this instance, Ivanovich did not present any quantifiable data to show his property was over-assessed. The Board of Review presented comparable properties that showed the subject property was not over-assessed. We find Ivanovich failed to provide sufficient proof his property is over-assessed and he failed to provide proof of the fair market value of the subject property.

Viewing the evidence as a whole, we determine Ivanovich has failed to prove by a preponderance of the evidence that his property was over-assessed as of January 1, 2009. Therefore, we affirm the property assessment as determined by the Board of Review. The Appeal Board determines that the property assessment value as of January 1, 2009, is \$87,100, representing \$29,000 in land value and \$58,100 in dwelling value.

THE APPEAL BOARD ORDERS that the January 1, 2009, assessment as determined by the Polk County Board of Review is affirmed.

Dated this 15 day of July 2010.


Jacqueline Rypma, Presiding Officer


Karen Oberman, Board Member

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>7-15</u> , 20 <u>10</u>	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	<u><i>James C. Hill</i></u>